

<sup>6</sup> *See id.*

comments all opposed the proposal.<sup>7</sup> On September 10, 2003, the Public Safety and Private Wireless Division (Division)<sup>8</sup> denied the petition.<sup>9</sup> The Division concluded that neither the petition nor the subsequent record demonstrated that a licensing requirement was in the public interest, or that the use of unauthorized frequencies was so widespread as to require Commission action.<sup>10</sup>

4. *Discussion.* In the present petition, Reich argues that the Commission should permit only licensed commercial radio operators to maintain and repair radios used in Part 90, 95, and 97 services in order to prevent unauthorized radio modifications, which he alleges, without substantiation, have become common.<sup>11</sup> We deny the instant petition because we again conclude that Reich has not demonstrated that such a requirement is in the public interest, or that unauthorized radio modifications are of a degree requiring such action. Reich provides no support for his contention that unauthorized modification(s) of such radio systems present a significant problem, whether by creating enforcement burdens, compromising our regulatory structure, or by presenting harmful interference to other services. Nor does he suggest that the Commission's enforcement processes are inadequate to ensure compliance with the specific rules that prohibit persons lacking the required certification from performing internal repairs or adjustments to such radio equipment. Section 1.401(e) of the Commission's Rules states that petitions that are premature or repetitive, or plainly do not warrant consideration, may be denied or dismissed without prejudice.<sup>12</sup> The Reich petition falls in that category. We require a more substantial basis than unsupported assertions before initiating a rulemaking proceeding.

5. The petition also is procedurally defective. Specifically, Reich does not provide the text for his several proposed modifications to the five rule Parts listed in his petition, and the substance of changes he requests is not consistently or clearly stated.<sup>13</sup> His description of the proposal's scope, for example, refers variously to "Equipment from 24 MHz to 35 MHz" and "The entire Low Band from 25 MHz to 50 MHz" as well as other frequency bands, including "930 MHz to 6 GHz in the areas close to existing Part 15 Transmitters."

6. *Conclusion.* In sum, we have no reason to believe that Reich has identified a significant problem. To the extent violations of our rules may occur, Reich fails to show that our existing regulatory regime and enforcement processes are inadequate to address them. In the absence of a demonstrated problem, and in light of the substantial statutory penalties<sup>14</sup> provided for unauthorized modification of

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<sup>7</sup> Dale E. Reich, *Memorandum Opinion and Order*, 18 FCC Rcd 18555, 18555 n.3 (WTB PSPWD 2003) (*Reich Order*).

<sup>8</sup> The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See *Reorganization of the Wireless Telecommunications Bureau, Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

<sup>9</sup> See *Reich Order*, 18 FCC Rcd at 18557 ¶ 7.

<sup>10</sup> See *id.* at 18557 ¶ 5.

<sup>11</sup> See *Petition* at 1, 2.

<sup>12</sup> 47 C.F.R. § 1.401(e), reads:

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

<sup>13</sup> See 47 C.F.R. § 1.401(c) ("The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.").

<sup>14</sup> See 47 U.S.C. §§ 501-503.

certificated equipment, by whomever performed, we do not believe that establishing licensing requirements for technicians is necessary.

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.401(c) and (e) of the Commission's Rules, 47 C.F.R. §§ 1.401(c) and (e), the Petition for Rule Making filed by Dale E. Reich IS DENIED.

8. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau